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EXAMINER

ROWAN, KURT C

ART UNIT

PAPER NUMBER

3643

DATE MAILED: 07/16/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
10/033,634

Applicant(s)
NELSON et al.

Examiner
KURT ROWAN

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— The MAILING DATE of this communication appears on the cover sheet with the correspondence address —

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Apr 25, 2003
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18, 20, 21, 23-33, 36-46, 48, 50-71, and 73-79 is/are pending in the application.
- 4a) Of the above, claim(s) 6, 7, 21, 59, 60, and 74 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 28 is/are allowed.
- 6) ☒ Claim(s) 1-5, 8-18, 20, 23-27, 29-33, 36-46, 48, 50-58, 61-71, 73, and 75-79 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 7 6) ☐ Other:

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DETAILED ACTION

Election/Restriction

1. Claims 6-7, 21, 59-60, and 74 withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made without traverse in Paper No. 6.

Claim Rejections - 35 U.S.C. § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-5, 8-18, 20, 23-27, 29-33, 36-46, 48, 50-58, 61-71, 73, 75-79 are rejected under 35 U.S.C. 103(a) as being unpatentable over Larkin.

The patent to Larkin shows an insect trap having a means for mounting the trap on a planar mounting surface as shown in Fig. 3. Larkin shows at least one source of insect attracting light 28, at least one insect immobilization surface 24 and a housing 12 configured to cooperate with the source of insect attracting light such that light from the source is directed into at least three insect attracting light patterns separated by about 120 degrees formed on the planar

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mounting surface such as shown in Fig. 4. In reference to claims 1, 29, 55, 75, Larkin shows light patterns in Fig. 4, but it is not clear if they overlap or not ? At any rate, it would have been obvious to provide non-overlapping light patterns since the function is the same and no stated problem is solved. In reference to claims 2 and 30, Larkin show a four sided housing, but it would have been obvious to employ a three sided housing since changes in shape are generally held to be obvious when the function is the same. In reference to claims 3 and 31, 56, Larkin shows each light pattern comprising radiated light. In reference to claims 4 and 32, 57, Larkin shows each light pattern comprising reflected and radiated light. In reference to claims 5 and 33, 58, Larkin shows the light patterns in fig. 4 separated by about 120 degrees. In reference to claims 9, 10, 37, 38, 62, 63, 64, Larkin shows an adhesive 24 and mounts the adhesive surface to the housing but it would have been obvious to mount the adhesive to the planar mounting surface near the housing since the function is the same. In reference to claims 12 and 40, 65, Larkin shows the trap mounted to a planar mounting surface which is a wall. In reference to claims 13 and 41, 66, Larkin mounts the trap to a wall, but states that other mounting surfaces such as the ceiling or possible in column 2, lines 65-66. In reference to claims 15 and 43, 67, 68, Larkin shows a planar reflecting surface. In reference to claims 17, 45, 70, Larkin discloses an insect attractant composition in column 3, lines 20-23. In reference to claims 16, 44, 69, Larkin shows a flat reflecting surface, but it would have been obvious to employ a curved surface or an open parallelepiped housing since the function is the same and no stated problem is solved. In reference to claims 18, 46, 71, Larkin shows a housing from a plurality of pieces but it would

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have been obvious to employ a one piece housing since the function is the same and no stated problem. Also, see *In re Larson et al.*, 144 USPQ 347. In reference to claims 20, 48, 73, Larkin shows three opening, one at the top of the housing and one at each side. In reference to claims 23, 51, Larkin shows the trap shape as a regular geometric shape. In reference to claims 24, 53, Larkin discloses two light sources referred to as #28, but it would have been obvious to employ three lights for multiplied effect with each source creating a separate light pattern. See *In re Harza*, 124 USPQ 378. In reference to claims 8, 25, 36, 61, 77, 78, Larkin does not disclose the use an ultraviolet light in his invention, but the Background of the Invention on page 2 states that ultraviolet sources are known in Prior Art insect traps. Hence it would have been obvious to employ a UV light. Also, Larkin discloses a fluorescent light, but it would have been obvious to employ a ultraviolet light since ultraviolet lights are known to attract insects and merely one light would be substituted for another. In reference to claim 54, a tubular configuration of the ultraviolet light source is old and well known. In reference to claims 27 and 29, 79, Larkin shows a rectangular housing with a rectangular plate, but it would have been obvious to employ other shapes for the housing and plate such as triangular since the function is the same and no stated problem is solved. Also, see *In re Dailey et al.*, 149 USPQ 47.

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Allowable Subject Matter

4. Claim 28 is allowed.

Response to Arguments

5. Applicant's arguments filed Dec. 24, 2002 have been fully considered but they are not persuasive. In response to applicant's argument that the examiner has not presented a complete rejection under 35 U.S.C. 103. However, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the knowledge is generally available to one of ordinary skill in the art.

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The patent to Smith shows another insect trap using patterns of light.

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7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

8.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **KURT ROWAN** whose telephone number is (703) 308-2321.

The examiner can normally be reached on Monday-Thursday from 6:30 a.m. to 5:00 p.m.

The fax phone number for the organization where this application or proceeding is assigned is (703) 306-4195 or (703) 305-3597.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

A handwritten signature in black ink that reads "Kurt Rowan". The signature is written in a cursive, slightly slanted style.

KURT ROWAN

PRIMARY EXAMINER

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July 13, 2003